

IT 95-9

Tax Type: INCOME TAX

Issue: Income Earned in Illinois/Individual Residency

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS

DEPARTMENT OF REVENUE)
STATE OF ILLINOIS) XXXXX
) SS# XXXXX
v.)
) Mimi Brin
XXXXXX) Administrative Law Judge
)

RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayers") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to them on July 22, 1994. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that they failed to file an Illinois income tax return for the year ending 1992 (hereinafter referred to as the "Tax Year"). The Notice assessed tax, various penalties and interest for income earned that year.

The taxpayers' protest was filed on their behalf by the XXXXX, the taxpayers' investment manager and tax preparer. Prior to the hearing on the matter, a XXXXX representative contacted me and delivered an affidavit setting forth relevant facts in this matter.

Based upon this information, I recommend that the deficiency assessed herein be cancelled.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency which

indicates that for the year ending December 31, 1992, taxpayers had an adjusted gross income of \$60,300 with a net income of \$58,300. Dept. Ex. No. 1

2. Taxpayers failed to file an Illinois income tax return for the tax year. Dept. Ex. No. 1

3. Taxpayers' Federal income tax return for the tax year was filed from Chicago by the XXXXX as taxpayers' investment manager and tax preparer. Taxpayers' Protest; Affidavit

4. Taxpayers were residents of Spain until moving to Arkansas in 1993; taxpayers derived no income from Illinois sources. Affidavit
Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 et seq., provides, inter alia, that a taxpayer shall file an Illinois income tax return if he is a resident of Illinois for all or part of the tax year or if he receives income derived from Illinois. 35 ILCS 5/301, 5/302, 5/303. In this case, taxpayers were neither residents of Illinois for any part of the tax year, nor did they receive any income earned in Illinois. Taxpayers' investment manager and tax preparer is located in Illinois and has the duty of filing necessary income tax returns on taxpayers' behalf. This, however, does not create a duty on taxpayers to file an Illinois income tax return.

Therefore, for the reasons stated above, it is my recommendation that the Notice of Deficiency in this cause be cancelled.

Mimi Brin
Administrative Law Judge